

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

Shikhar Chand
Vs.
Suresh Chand and anr.

S.B. CIVIL WRIT PETITION NO.4356/2007.

Date of Order : 21/8/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri J.P. Goyal for the petitioner.
Shri R.P. Garg for the respondents.

BY THE COURT:-

Petitioner has challenged the order dated 1/5/2007 whereby consolidation of his suit being Civil Suit No.14/2003 filed for declaring him as owner of the property and Civil Suit No.29/2003 filed by respondent No.1 Suresh Chand in relation to the same property and in the same court, for recovery of possession was rejected.

2) Learned counsel for the petitioner argued that while the petitioner is claiming relief of declaration of his ownership against respondent

No.1 who is defendant in his suit, the respondent No.1 in his suit is claiming possession of the very same property from the petitioner impleading him as defendant. Both the suits are pending in the same court and with the completion of pleadings, the issues have also been framed which are substantially the same and overlapping. In support of his contention, he has placed reliance on the judgment of the Hon'ble Supreme Court in **M/s.Chitivalasa Jute Mills Vs. M/s.Jaypee Rewa Cement : AIR 2004 SC 1687.**

3) Shri R.P. Garg, learned counsel for respondent No.1 opposed the prayer and argued that the nature of the suit, prayers contained therein as well as the issues framed in the suit are different and, therefore, merely because the two suits are with regard to the same property, they cannot be allowed to be consolidated.

4) Hon'ble Supreme Court in **M/s.Chitivalasa Jute Mills** supra, has held that though the Code of Civil Procedure does not specifically speak of

consolidation of suits but the same can be done under the inherent powers of the Court flowing from Section 151 of the CPC. Unless specifically prohibited, the Civil Court has inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses. Complete or even substantial and sufficient similarity of the issues arising for decision in two suits enables the two suits being consolidated for trial and decision. The parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the two suits at two different trials. The evidence having been recorded, common arguments need be addressed followed by one common judgment.

5) On applying the law authoritatively enunciated by their lordships of the Hon'ble

Supreme Court in the aforesaid case, I find that the issue raised in the present suit is squarely falls within the four corners thereof because not only the property in dispute is same but parties in the suits are also same and both the suits have been filed in the same court. It would be therefore in the interest of justice and to secure the ends of justice that two suits are consolidated and tried together so as to be decided at the same trial.

6) In the facts of the case, I am of the considered view that the learned trial court erred in law in not directing consolidation of the suits.

In the result, the writ petition is allowed. The order of the trial court dated 1/5/2007 (Ann.5) is set-aside and the two suits being Civil Suits No.14/2003 and 29/2003 are ordered to be consolidated for being tried together.

Anil

(MOHAMMAD RAFIQ), J.